

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 02-41380)	
)	
TITAN ENTERPRISES LLC)	
)	
Debtor)	
)	
)	
G.B. MANAGEMENT, INC.)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 04-4018
)	
TITAN ENTERPRISES LLC)	
)	
Defendant)	

DECISION

At Fort Wayne, Indiana, on May 16, 2006

This matter is before the court following trial of the issues raised in this adversary proceeding by which the plaintiff, the court-appointed receiver of The Brethren's Home of Indiana, Inc., seeks to establish a claim against the bankruptcy estate as a result of what it characterizes as a fraudulent transfer of 87 acres of farmland to the debtor's remote predecessor in title.¹ If the plaintiff can establish that the earlier transfer was fraudulent, it may recover from subsequent transferees "other than a good faith transferee who took for value." I.C. 32-18-2-18(b)(2). The action is based upon the Indiana Uniform Fraudulent Transfer Act. I.C. 32-18-2-18(b).

The parties' stipulations included a chain of title for the land in question beginning with Brethren's Home of Indiana and ending in the transfer to Titan Enterprises, but did not include the

¹Titan Enterprise's objection to G.B. Management's proof of claim has been consolidated with the issues raised in this adversary proceeding. Docket Entry of Oct. 12, 2004, Case No. 02-41380.

dates on which the various transfers occurred. See, Parties Stipulation of Documents filed on Jan. 16, 2006. The court has pieced together the information it has been given, so that some of those dates become a bit clearer, but others are still missing from the record. As best the court can tell, the transfers are as follows:

1. The land was transferred from Brethren's Home of Indiana to Brethren's Healthcare Corporation in late 1994 or early 1995.
2. The land was transferred from Brethren's Healthcare Corporation to BHC, LLC in January 1997.
3. The land was transferred from BHC, LLC back to Brethren's Healthcare Corporation.
4. The land was again transferred from Brethren's Healthcare Corporation to BHC, LLC.
5. The land was transferred from BHC, LLC to Beckner Farms at some point in 2000.
6. The land was transferred from Beckner Farms to Titan Enterprises, LLC in 2001.

The roots of this controversy go back to the first transfer – the sale by Brethren's Home of Indiana to Brethren's Healthcare Corporation for approximately \$2.2 million, represented by a promissory note secured by a mortgage on the property transferred. The plaintiff contends that Mr. Beckner, president of Brethren's Healthcare Corporation, intentionally failed to record the mortgage conveying the land in question following the transfer and that this failure enabled the buyer to subsequently transfer the property without satisfying the seller's lien; thus the 1997 transfer from Brethren's Healthcare to BHC was done with the intent to hinder, delay or defraud creditors. The number of conveyances and the time which has passed make this proceeding appear more convoluted than it really is, for the only transfer at issue is that from Brethren's Healthcare to BHC. If that transfer was done with the intent to hinder, delay or defraud Brethren Healthcare's creditors, the

plaintiff may be able to establish a claim against the estate, via I.C. 32-18-2-18(b)(2), as the remote grantee of the recipient of a fraudulent transfer. If the transfer was not fraudulent, there is no reason to inquire further.

A transfer is fraudulent as to the transferor's creditors if it was made with the intent to hinder, delay or defraud creditors or is made without receiving reasonably equivalent value in exchange. I.C. 32-18-2-14. These are alternative bases for avoidance, not conjunctive ones. The plaintiff only needs to demonstrate either that the transfer was made with the intent to hinder, delay or defraud the debtor's creditors or that it was made without receiving reasonably equivalent value.

The creditor challenging a transfer as having been made with the intent to hinder, delay or defraud creditors bears the burden of proving that intent. See, Medical & Professional Collection Services., Inc. v. Bush, 734 N.E.2d 626, 630 (Ind. Ct. App. 2000). Because of the difficulty in determining a transferor's subjective intent to defraud creditors, the courts in Indiana and elsewhere allow that intent to be inferred from the presence of recognized badges of fraud. See, Greenfield v. Arden Penn Partners, L.P., 757 N.E.2d 699 (Ind. Ct. App. 2001); Diss v. Agri Business Intern., Inc., 670 N.E.2d 97, 99-100 (Ind. Ct. App. 1996); Arnold v. Dirrim, 398 N.E.2d 442, 446 (Ind. App. 1979). See also, In re Penner 107 B.R. 171 (Bankr. N.D. Ind.1989). Included in the list of badges of fraud are:

1. a transfer of property while a suit is pending;
2. a series of contemporaneous transactions which strip a debtor of its property;
3. secret or hurried transactions;
4. transactions out of the usual mode of doing business;
5. the fact that no consideration is given; and,

6. transactions between family members. Otte v. Otte, 655 N.E.2d 76, 81 (Ind. Ct. App.1995).

No single badge is determinative. Instead, it is the cumulative effect of the entire situation which will permit the finder of fact to draw the inference of fraudulent intent. Otte v. Otte, 655 N.E.2d at 81; Penner 107 B.R. at 176.

The evidence submitted has proven the presence of only one badge of fraud – a transaction between related entities. No evidence was presented to suggest that the transfer from Brethren’s Healthcare Corporation to BHC, LLC was made while a suit against the debtor was pending, that it was done through a series of transactions to strip Brethren’s Healthcare of its property, that the transaction was secret or hurried, or that it was made for inadequate consideration. Furthermore, Brethren’s Healthcare continued to make payments on its note to the Brethren Home for three years after the transfer – until September 2000 – before it defaulted. This hardly seems to be consistent with the actions of a transferor who is seeking to hinder, delay or defraud its creditors.

When the facts are viewed in their totality, the court is not willing to conclude that Brethren’s Healthcare Corporation transferred the property in question to BHC, LLC with the actual intent to hinder, delay or defraud its creditors. Since the plaintiff has failed to prove that debtor’s predecessor in title was the recipient of a fraudulent transfer, it has no claim against the estate and its claim will be denied. Judgment will be entered accordingly.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court